IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-492

MOTION FILED

MAR 8 1972

LLOYD CORPORATION, LTD.,
Petitioner,

v.

DONALD M. TANNER, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT MOTION FOR LEAVE TO ENGAGE IN ORAL ARGUMENT

LAWRENCE M. COHEN
LEDERER, FOX and GROVE
111 W. Washington Street
Chicago, Illinois 60602

ROGER JON DIAMOND
15415 Sunset Boulevard
Pacific Palisades, California
90272
Pro Se.

ALLEN B. GRESHAM
LONERGAN, JORDAN, GRESHAM & VARNER
308 W. Fourth Street
San Bernardino, California 92401

J. S. ROLLINGS
Homart Development Co.
925 S. Homan Avenue
Chicago, Illinois 60607
Attorneys for Homart Development Co.

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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Homart Development Co. ("Homart") and Roger Jon Diamond ("Diamond"), the petitioner and principal respondent respectively in *Homart Development Co.* v. *Diamond*, No. 1469, *jt. pet. reh. den.*, March 6, 1972 (the Chief Justice and Mr. Justice Blackmun being of the opinion that the motion should be granted), hereby respectfully move for leave to engage in oral argument of the instant case as provided for in Rule 44(7) of the Rules of this Court.[1] This motion is based on the following reasons:

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[1] Homart is simultaneously herewith filing a motion for leave to file a brief *amicus curiae* and brief *amicus curiae* in support of the petitioner. Diamond intends to file, within the time limits provided by Rule 42, a similar motion, if needed, and brief *amicus curiae* in support of the respondents.

1. Homart and Diamond are uniquely qualified to provide assistance to this Court that is not otherwise available. The litigation in No. 1469 raised recurrent and important questions, critical to an appropriate resolution of this controversy, apart from those presented by the parties hereto. For example, by granting this motion, the Court would gain the experience of Homart and Diamond's views on such additional significant aspects of the present dispute as (a) whether, in the case of the *enclosed interior mall* of a *typical* shopping center, a similar or different rule of law should prevail; (b) whether, where a shopping center has *uniformly* prohibited the use of its premises for unrelated non-commercial free speech activities, a similar or different result is required; (c) whether the decision of the Court in the present case has equal force to an initiative solicitation campaign where the alternative channels of communication available are both less numerous and less effective; and (d) whether, if the decision below is affirmed, shopping centers may nevertheless restrain *in advance*, by means of the unilateral promulgation of "reasonable regulations, the exercise of First Amendment activities".

2. In addition to the insights they have gleaned as a result of the controversy in No. 1469, Homart and Diamond have also engaged in other litigation which may be of benefit to the Court. Homart has thus successfully argued to the Rhode Island courts that it may bar campaigning by political candidates at one of its shopping centers (*Homart Development Co.* v. *Fein* (R.I. Super.Ct. Aug. 6, 1971), *app.pend.*, No. 1174-A (R.I.Sup.Ct.), reprinted at pp. 16a-22a of the present pet. for cert.) and participated as an *amicus* in both this case when it was before the Ninth Circuit and the related dispute in *Taggart* v. *Weinacker's*, 397 U.S. 223 (1970). Diamond has also valuable experience. He has represented the petitioner in *Ball* v. *California*, —— U.S. ——, 30 L.Ed. 2d 189 (No. 71-209; Oct. 26, 1971), in which this Court denied review (Mr. Justice Douglas being of the opinion

that certiorari should be granted) of the conviction of a petition solicitor for engaging in peaceful First Amendment activities on the public parking lot of Disneyland; the defendant in *People* v. *Brayshaw*, No. A-332 (Riverside City, Cal. Super. Ct.) (Nov. 30, 1971), in which the trespass conviction of another petition solicitor, on the basis of that he had refused to agree in advance to the regulations issued by a shopping center, ultimately was reversed; the plaintiffs in *Brayshaw* v. *Sears, Roebuck and Co.*, No. WEC 24032 (Los Angeles City, Cal. Super. Ct.), a case in which Sears has been enjoined from prohibiting certain free speech activities on the public parking lot of one of its free-standing stores; and People's Lobby as an *amicus* in *Chumley* v. *Santa Anita Consolidated, Inc.*, 15 Cal. App. 3rd 452,—Cal.Rptr.—(1971), where *Logan Valley* was held not to sanction the sale of newspapers at a race track. Homart and Diamond, as a result, are able to delineate for the Court multiple areas of substantial importance that may be outside the expertise of the parties in this case.

WHEREFORE, in order that the Court may have their unique assistance should it choose to consider other important aspects of the issues here involved and thus further elucidate this important area of the law, Homart and Diamond pray that this joint motion be granted.

Respectfully submitted,

ROGER JON DIAMOND
15415 Sunset Boulevard
Pacific Palisades, California
90272
Pro Se.

LAWRENCE M. COHEN
LEDERER, FOX and GROVE
111 W. Washington Street
Chicago, Illinois 60602

ALLEN B. GRESHAM
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